



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
B. E. I. Refueling Services, Inc.
FOR
Incident Report (IR) No. 2019-S-1919**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.34:20, between the State Water Control Board and B. E. I. Refueling Services, Inc., for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations due to the wreck of a fuel oil tanker truck on Route 460, approximately 0.4 mile west of Oakwood, in Buchanan County, Virginia.

SECTION B: Definitions

Unless the context indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "BEI" means B. E. I. Refueling Services, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. B. E. I. Refueling Services, Inc. is a "person" within the meaning of Va. Code § 62.1-44.3.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

3. "Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.
7. "Location" or "Site" means the facility, land, road, storm drain(s) or state water(s) where the oil discharge occurred, on Route 460, approximately 0.4 mile west of Oakwood, in Buchanan County, Virginia
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. *See* Va. Code §62.1-44.34:14.
10. "Operator" means any person who owns, operates, charters, rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.
13. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
14. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 11 (Va. Code §§ 62.1-44.34:14 through 62.1-44.34:23) of the State Water Control Law addresses discharge of oil into waters.
15. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
16. "Va. Code" means the Code of Virginia (1950), as amended.
17. "VAC" means the Virginia Administrative Code.

18. "Vehicle" means any motor vehicle, rolling stock or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.
19. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. BEI operates a carrier trucking company specializing in the transport and delivery of liquid petroleum products in bulk via tractor trailer tankers.
2. On November 12, 2018, DEQ SWRO staff received notification of, and investigated, a discharge of fuel oil 0.4 mile west of Oakwood on Route 460, in Buchanan County.
3. A tanker truck laden with 6,600 gallons of #2 fuel oil (dyed diesel) struck a cliff, overturned and released fuel oil. The entire 6,600 gallons of fuel oil were discharged from the tanker truck. The discharged fuel oil entered a storm drainage way and also ran overland across Route 460, down the embankment and into the Levisa Fork River. Fuel oil continued to discharge from the embankment along Route 460 into the Levisa Fork River. On November 15, 2018, a sheen of oil was observed in the Levisa Fork River approximately 3 mile west of Grundy, Virginia, approximately 14 miles downstream from the Site.
4. The local fire department responding to the accident placed oil booms at the storm drains and also utilized oil pads and "oil dry" absorbent to contain residual oil. B.E.I. Refueling Services, Inc. (BEI), the owner of the tanker truck, hired a contractor to contain and clean up the spill. Harbor booms and absorbent booms were placed along the bank and within the Levisa Fork River. However, due to the close proximity of the wreck to the river, the porous nature of the road bed and high stream flows at the time of the incident, very little oil was recovered. Most of the oil entered the river directly or was "flushed" from the road bed and into the river within a short time. IR No. 2019-S-1919 was assigned to this incident. There are no water intakes downstream from the Site in Virginia. Water quality officials in Kentucky were notified of the discharge.
5. The Levisa Fork River is located in the Tennessee and Big Sandy River Basin, Big Sandy River Subbasin, and is classified as Section 3; Class IV; Special Standards none. The Levisa Fork River is listed as impaired for failure to support the recreation, aquatic life and fish consumption uses in both segments impacted by the discharge. The cause of each use impairment is listed as bacteria from sewage discharges in unsewered areas, sediment from coal related activities and PCBs from unknown sources, respectively. Both segments of the Levisa Fork River impacted are included in the E.coli, Phased Benthic and Phased Total PCB TMDL Development for Levisa Fork, Slate Creek and Garden Creek. This TMDL was approved by EPA on March 18, 2011, but has not been approved by the SWCB.

6. The Levisa Fork River is a surface water located partially within the Commonwealth and is a "state water" under State Water Control Law.
7. The total cost of DEQ staff investigation of the discharge of oil to the Levisa Fork River (IR No. 2019-S-1919), is \$2,936.80.
8. Va. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems that violate applicable water quality standards or cause a film or sheen upon or discoloration of the surface of the water.
9. Va. Code § 62.1-44.34:18(C) allows the Commonwealth to recover all costs and expenses of investigation of the discharge of oil into or upon state waters, lands or storm drain systems.
10. On December 13, 2018, the Department issued Notice of Violation No. NOV-010-1218-WA to BEI for the discharge of oil to the land, storm drainage way and state waters.
11. On January 25, 2019, DEQ received BEI's written response to the NOV (BEI's Position Statement, dated January 24, 2019). Documentation included a review of the facts of the case, BEI's actions at the time of the wreck and afterward, mitigating factors, as well as the following exhibits: a) the Police Crash Report; b) a letter and invoice regarding assistance provided by the local fire department; c) an invoice for services provided by the Virginia Department of Emergency Management; d) an invoice for services provided by BEI's environmental contractor; e) a copy of the July 18, 2018 "compliant" Department of Transportation (DOT) tanker inspection Report; and f) a copy of the July 18, 2018 "passed" DOT Vapor Recovery Tank Truck Certification.
12. The Police Crash Report indicated that the driver failed to maintain control of the vehicle. Invoices provided by BEI reflected investigative activities, installation and maintenance of harbor booms, absorbent booms and pads, use of oil dry, traffic control activities, etc. by the volunteer fire department, VDEM and the environmental contractor, which totaled \$71,129.04. The two DOT forms submitted indicated the compliant condition of the tanker, itself.
13. Per submittal dated March 6, 2019, BEI provided documentation regarding the volume of diesel fuel in the tanker (6,600 gallons) and expenditures of an additional \$19,273.90 for continued monitoring for the period from January 7, 2019 through February 15, 2019, bringing that total expenditure to \$90,402.94. As stated in its March 6, 2019 letter, BEI anticipates approximately two more weeks of monitoring of the Site by its environmental contractor.
14. Based on the results of Site inspections and field investigations on November 12-13, 14, 15, 19 and 29, 2018, and documentation submitted on January 25, 2019 and March 6, 2019, the State Water Control Board concludes that BEI has violated Va. Code § 62.1-44.34:18, which prohibits the discharge of oil into or upon state waters, lands, or storm drain systems, as described in paragraphs C(2) through C(4), above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.34:20 and Va. Code § 62.1-44.34:18(C)(1), the Board orders B. E. I. Refueling Services, Inc., and B. E. I. Refueling Services, Inc. agrees:

1. To pay a civil charge of \$46,200.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order;
2. To reimburse DEQ \$2,936.80 for oil discharge investigative costs within 30 days of the effective date of the Order; and
3. To conduct, should future environmental problems occur, which the DEQ determines are related to this release, additional investigation and corrective action, which may be required in accordance with State Law.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

B. E. I. Refueling Services, Inc. shall include its Federal Employer Identification Number (FEIN) with the payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF). If the Department has to refer collection of moneys due under this Order to the Department of Law, B. E. I. Refueling Services, Inc. shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of BEI for good cause shown by BEI, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. NOV-010-1218-WA dated December 13, 2018. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, BEI admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. BEI consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. BEI declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by BEI to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. BEI shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. BEI shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. BEI shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

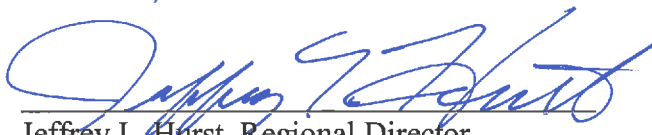
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and BEI. Nevertheless, BEI agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after BEI has completed all of the requirements of the Order;
 - b. BEI petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to BEI.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve BEI from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by BEI and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of BEI certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind BEI to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of BEI.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, BEI voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 20th day of May, 2019.


Jeffrey L. Hurst, Regional Director
Department of Environmental Quality

B. E. I. Refueling Services, Inc. voluntarily agrees to the issuance of this Order.

Date: 3/19/2019 By: Eduard M. Staples, Vice President
(Person) (Title)
B. E. I. Refueling Services, Inc.

~~Commonwealth of Virginia~~ Ohio

City/County of Warren

The foregoing document was signed and acknowledged before me this 19 day of

March, 2019, by Eduard M. Staples who is

Vice President of B. E. I. Refueling Services, Inc., on behalf of the

corporation.

June Wolfe
Notary Public

NOT 2017010016
Registration No.

My commission expires: JUNE WOLFE
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires 12/6/2021

Notary seal: